

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JUXTACOMM TECHNOLOGIES, INC.	§	
	§	
PLAINTIFF,	§	
	§	
v.	§	Civil Action No. 2:07-CV-00359-LED
	§	
(1) ASCENTIAL SOFTWARE CORPORATION,	§	
(2) BUSINESS OBJECTS SA,	§	
(3) BUSINESS OBJECTS AMERICA,	§	
(4) CA, INC.,	§	
(5) COGNOS CORPORATION,	§	
(6) DATAMIRROR, INC.,	§	
(7) FIORANO SOFTWARE, INC.,	§	
(8) HUMMINGBIRD LTD.,	§	
(9) INTERNATIONAL BUSINESS	§	
MACHINES CORPORATION,	§	
(10) INFORMATICA CORPORATION,	§	
(11) INFORMATION BUILDERS, INC.,	§	
(12) INTERSYSTEMS CORPORATION,	§	
(13) METASTORM, INC.,	§	
(14) MICROSOFT CORPORATION,	§	
(15) OPEN TEXT CORPORATION,	§	
(16) SOFTWARE AG,	§	
(17) SOFTWARE AG, INC.,	§	
(18) SYBASE, INC.,	§	
(19) WEBMETHODS, INC.	§	
	§	
DEFENDANTS.	§	

JOINT MOTION FOR PARTIAL DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, Plaintiff JuxtaComm Technologies, Inc. (“JuxtaComm”) and Defendants Hummingbird Ltd. (“Hummingbird”) and Open Text Corporation (“Open Text”) (collectively “Defendants”) file this Joint Motion for Partial Dismissal Without Prejudice and show as follows:

1. On or about July 1, 2008, Open Text and Hummingbird merged under Articles of Amalgamation prepared and filed in accordance with the laws of Canada. The name of the company that survived the amalgamation was Open Text. Hummingbird ceased to exist.

2. As successor in interest to the amalgamated companies, Open Text is responsible for all liabilities of the amalgamated companies, including all liabilities that Hummingbird may now and hereinafter owe to JuxtaComm in connection with the claims in the pending litigation.

3. JuxtaComm and the Defendants stipulate that Hummingbird no longer exists as a corporation and Open Text is the successor in interest to any Hummingbird liability in this matter. Therefore it is no longer necessary to name Hummingbird as a defendant and Hummingbird's name will be removed from the caption of the case and no longer listed as a named defendant. This dismissal of Hummingbird shall in no way prejudice JuxtaComm's right and ability to recover damages from Open Text for the acts or omissions of Hummingbird alleged in JuxtaComm's First Amended Complaint for Patent Infringement (Docket No. 30) and any subsequent amendments thereof and JuxtaComm shall have the right to refer to Hummingbird and its alleged acts and omissions during the trial of the lawsuit and to obtain appropriate jury instructions from the Court regarding Open Text's liability for Hummingbird's alleged conduct in connection with JuxtaComm's claim for patent infringement damages.

ACCORDINGLY, the Parties move the Court for an Order dismissing Hummingbird from this lawsuit without prejudice to JuxtaComm's rights and abilities to pursue against Open Text the claims arising out of or from Hummingbird's alleged acts and omissions, as set forth in paragraph 3 above.

Dated: November 13, 2008

Respectfully submitted,

/s/ N. Claire Abernathy

S. Calvin Capshaw
State Bar No. 03783900
Elizabeth L. DeRieux
State Bar No. 05770585
N. Claire Abernathy
State Bar No. 24053063
Capshaw DeRieux, L.L.P.
1127 Judson Rd., Suite 220
Longview, TX 75601
Telephone: (903)236-9800
Facsimile: (903) 236-8787
Email: ccapshaw@capshawlaw.com
Email: ederieux@capshawlaw.com
Email: chenry@capshawlaw.com

Wayne C. Matus – *admitted pro hac vice*
PILLSBURY WINTHROP SHAW PITTMAN LLP
1540 Broadway
New York, NY 10036-4039
Telephone: (212) 858-1000
Facsimile: (212) 858-1500
Email: wayne.matus@pillsburylaw.com

James G. Gatto – *admitted pro hac vice*
PILLSBURY WINTHROP SHAW PITTMAN LLP
1650 Tysons Boulevard
McLean, VA 22102-4859
Telephone: (703) 770-7900
Facsimile: (703) 770-7901
Email: james.gatto@pillsburylaw.com

**ATTORNEYS FOR DEFENDANTS OPEN
TEXT CORPORATION AND
HUMMINGBIRD LTD.**

and

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ R. Laurence Macon (with permission)

R. Laurence Macon

State Bar No. 12787500

lmacon@akingump.com

Kirt S. O'Neill

State Bar No. 00788147

koneill@akingump.com

300 Convent Street, Suite 1600

San Antonio, Texas 78205-3732

Telephone: (210) 281-7000

Fax: (210) 224-2035

Steven M. Zager

szager@akingump.com

State Bar No. 22241500

1111 Louisiana Street, 44th Floor

Houston, Texas 77002

Telephone: (713) 220-5800

Fax: (713) 236-0822

– and –

LOCAL COUNSEL

T. John Ward, Jr.

WARD & SMITH LAW FIRM

P.O. Box 1231

Longview, Texas 75606-1231

Telephone: (903) 757-6400

Fax: (903) 757-2323

jw@jwfirm.com

**ATTORNEYS FOR PLAINTIFF
JUXTACOMM TECHNOLOGIES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 13th day of November, 2008, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ N. Claire Abernathy _____
N. Claire Abernathy